

JUDICIARY AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Scott L Wyatt

LONG TITLE

General Description:

This bill makes changes to the Tax and Judicial Codes regarding overpayment of taxes, court commissioners, earmarked funds, and other changes.

Highlighted Provisions:

This bill:

- ▶ deletes a provision that required the court to reduce the amount of bail by the amount it received from an overpayment of taxes;
- ▶ includes court commissioners in the definition of judge for the purpose of imposing penalties for persons who threaten, intimidate, or interfere with a commissioner, or who retaliate against a commissioner for the performance of the commissioner's official duties;
- ▶ increases the amount of per annum compensation a presiding judge receives;
- ▶ provides that child protective orders expire when the subject of the order is 18 years of age, unless a judge vacates the order before the subject of the order is 18 years of age;
- ▶ increases the amount of money allocated to the Children's Legal Defense Account and the Dispute Resolution Fund; and
- ▶ clarifies that a defendant has the right to a hearing within three days, if the defendant demands a hearing within three days of being served with notice that the plaintiff has filed a possession bond.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**31 **§→ [None] This bill has a Coordination Clause. ←§**32 **Utah Code Sections Affected:**

33 AMENDS:

34 **59-10-529**, as last amended by Chapter 35, Laws of Utah 200235 **76-8-316**, as last amended by Chapters 9 and 209, Laws of Utah 200136 **78-3-29**, as last amended by Chapter 171, Laws of Utah 199837 **78-3h-105**, as last amended by Chapter 201, Laws of Utah 200438 **78-7-35**, as last amended by Chapters 132 and 199, Laws of Utah 200639 **78-36-8.5**, as last amended by Chapter 123, Laws of Utah 198740

41 *Be it enacted by the Legislature of the state of Utah:*42 Section 1. Section **59-10-529** is amended to read:43 **59-10-529. Overpayment of tax -- Credits -- Refunds.**44 (1) In cases where there has been an overpayment of any tax imposed by this chapter,
45 the amount of overpayment is credited as follows:

46 (a) against any income tax then due from the taxpayer;

47 (b) against:

48 (i) the amount of any judgment against the taxpayer, including one ordering the
49 payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims

50 Restitution Act, obtained through due process of law by any entity of state government; or

51 (ii) any child support obligation which is due or past due, as determined by the Office
52 of Recovery Services in the Department of Human Services and after notice and an opportunity
53 for an adjudicative proceeding, as provided in Subsection (2); or54 (c) as bail, to ensure the appearance of the taxpayer before the appropriate authority to
55 resolve an outstanding warrant against the taxpayer for which bail is due, if a court of
56 competent jurisdiction has not approved an alternative form of payment. This bail may be
57 applied to any fine or forfeiture which is due and related to a warrant which is outstanding on
58 or after February 16, 1984, and in accordance with Subsections (3) and (4).

59 (2) (a) Subsection (1)(b)(ii) may be exercised only if the Office of Recovery Services
60 has sent written notice to the taxpayer's last-known address or the address on file under Section
61 62A-11-304.4, stating:

62 (i) the amount of child support that is due or past due as of the date of the notice or
63 other specified date;

64 (ii) that any overpayment shall be applied to reduce the amount of due or past-due child
65 support specified in the notice; and

66 (iii) that the taxpayer may contest the amount of past-due child support specified in the
67 notice by filing a written request for an adjudicative proceeding with the office within 15 days
68 of the notice being sent.

69 (b) The Office of Recovery Services shall establish rules to implement this Subsection
70 (2), including procedures, in accordance with the other provisions of this section, to ensure
71 prompt reimbursement to the taxpayer of any amount of an overpayment of taxes which was
72 credited against a child support obligation in error, and to ensure prompt distribution of
73 properly credited funds to the obligee parent.

74 (3) Subsection (1)(c) may be exercised only if:

75 (a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail,
76 appear, or otherwise satisfy the terms of a citation, summons, or court order; and

77 (b) a notice of intent to apply the overpayment as bail on the issued warrant has been
78 sent to the person's current address on file with the commission.

79 (4) (a) The commission shall deliver the overpayment applied as bail to the court that
80 issued the warrant of arrest. The clerk of the court is authorized to endorse the check or
81 commission warrant of payment on behalf of the payees and deposit the monies in the court
82 treasury.

83 (b) The court receiving the overpayment applied as bail shall order withdrawal of the
84 warrant for arrest of the taxpayer if the case is one for which a personal appearance of the
85 taxpayer is not required and if the dollar amount of the overpayment represents the full dollar
86 amount of bail. In all other cases, the court receiving the overpayment applied as bail is not
87 required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day
88 period, and the taxpayer may be arrested on the warrant. [~~However, the bail amount shall be~~
89 ~~reduced by the amount of tax overpayment received by the court.~~]

90 (c) If the taxpayer fails to respond to the notice described in Subsection (3), or to
91 resolve the warrant within 40 days after the notice was sent under that Subsection, the
92 overpayment applied as bail is forfeited and notice of the forfeiture shall be mailed to the
93 taxpayer at the current address on file with the commission. The court may then issue another
94 warrant or allow the original warrant to remain in force if:

- 95 (i) the taxpayer has not complied with an order of the court;
- 96 (ii) the taxpayer has failed to appear and respond to a criminal charge for which a
97 personal appearance is required; or
- 98 (iii) the taxpayer has paid partial but not full bail in a case for which a personal
99 appearance is not required.

100 (5) If the alleged violations named in the warrant are later resolved in favor of the
101 taxpayer, the bail amount shall be remitted to the taxpayer.

102 (6) Any balance shall be refunded immediately to the taxpayer.

103 (7) (a) If a refund or credit is due because the amount of tax deducted and withheld
104 from wages exceeds the actual tax due, a refund or credit may not be made or allowed unless
105 the taxpayer or his legal representative files with the commission a tax return claiming the
106 refund or credit:

107 (i) within three years from the due date of the return, plus the period of any extension
108 of time for filing the return provided for in Subsection (7)(c); or

109 (ii) within two years from the date the tax was paid, whichever period is later.

110 (b) Except as provided in Subsection (7)(d), in other instances where a refund or credit
111 of tax which has not been deducted and withheld from income is due, a credit or refund may
112 not be allowed or made after three years from the time the tax was paid, unless, before the
113 expiration of the period, a claim is filed by the taxpayer or his legal representative.

114 (c) Beginning on July 1, 1998, the commission shall extend the period for a taxpayer to
115 file a claim under Subsection (7)(a)(i) if:

116 (i) the time period for filing a claim under Subsection (7)(a) has not expired; and

117 (ii) the commission and the taxpayer sign a written agreement:

118 (A) authorizing the extension; and

119 (B) providing for the length of the extension.

120 (d) Notwithstanding Subsection (7)(b), beginning on July 1, 1998, the commission

121 shall extend the period for a taxpayer to file a claim under Subsection (7)(b) if:

122 (i) the three-year period under Subsection (7)(b) has not expired; and

123 (ii) the commission and the taxpayer sign a written agreement:

124 (A) authorizing the extension; and

125 (B) providing for the length of the extension.

126 (8) The fine and bail forfeiture provisions of this section apply to all warrants and fines
127 issued in cases charging the taxpayer with a felony, a misdemeanor, or an infraction described
128 in this section which are outstanding on or after February 16, 1984.

129 (9) If the amount allowable as a credit for tax withheld from the taxpayer exceeds the
130 tax to which the credit relates, the excess is considered an overpayment.

131 (10) A claim for credit or refund of an overpayment which is attributable to the
132 application to the taxpayer of a net operating loss carryback shall be filed within three years
133 from the time the return was due for the taxable year of the loss.

134 (11) If there has been an overpayment of the tax which is required to be deducted and
135 withheld under Section 59-10-402, a refund shall be made to the employer only to the extent
136 that the amount of overpayment was not deducted and withheld by the employer.

137 (12) If there is no tax liability for a period in which an amount is paid as income tax,
138 the amount is an overpayment.

139 (13) If an income tax is assessed or collected after the expiration of the applicable
140 period of limitation, that amount is an overpayment.

141 (14) (a) If a taxpayer is required to report a change or correction in federal taxable
142 income reported on his federal income tax return, or to report a change or correction which is
143 treated in the same manner as if it were an overpayment for federal income tax purposes, or to
144 file an amended return with the commission, a claim for credit or refund of any resulting
145 overpayment of tax shall be filed by the taxpayer within two years from the date the notice of
146 the change, correction, or amended return was required to be filed with the commission.

147 (b) If the report or amended return is not filed within 90 days, interest on any resulting
148 refund or credit ceases to accrue after the 90-day period.

149 (c) The amount of the credit or refund may not exceed the amount of the reduction in
150 tax attributable to the federal change, correction, or items amended on the taxpayer's amended
151 federal income tax return.

152 (d) Except as specifically provided, this section does not affect the amount or the time
153 within which a claim for credit or refund may be filed.

154 (15) No credit or refund may be allowed or made if the overpayment is less than \$1.

155 (16) The amount of the credit or refund may not exceed the tax paid during the three
156 years immediately preceding the filing of the claim, or if no claim is filed, then during the three
157 years immediately preceding the allowance of the credit or refund.

158 (17) In the case of an overpayment of tax by the employer under the withholding
159 provisions of this chapter, a refund or credit shall be made to the employer only to the extent
160 that the amount of the overpayment was not deducted and withheld from wages under the
161 provisions of this chapter.

162 (18) If a taxpayer who is entitled to a refund under this chapter dies, the commission
163 may make payment to the duly appointed executor or administrator of the taxpayer's estate. If
164 there is no executor or administrator, payment may be made to those persons who establish
165 entitlement to inherit the property of the decedent in the proportions set out in Title 75, Utah
166 Uniform Probate Code.

167 (19) Where an overpayment relates to adjustments to net income referred to in
168 Subsection 59-10-536[~~(3)(c)~~] (5), credit may be allowed or a refund paid any time before the
169 expiration of the period within which a deficiency may be assessed.

170 (20) An overpayment of a tax imposed by this chapter shall accrue interest at the rate
171 and in the manner prescribed in Section 59-1-402.

172 Section 2. Section **76-8-316** is amended to read:

173 **76-8-316. Influencing, impeding, or retaliating against a judge or member of the**
174 **Board of Pardons and Parole.**

175 (1) A person is guilty of a third degree felony if the person threatens to assault, kidnap,
176 or murder a judge or a member of the Board of Pardons and Parole with the intent to impede,
177 intimidate, or interfere with the judge or member of the board while engaged in the
178 performance of the judge's or member's official duties or with the intent to retaliate against the
179 judge or member on account of the performance of those official duties.

180 (2) A person is guilty of a second degree felony if the person commits an assault on a
181 judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or
182 interfere with the judge or member of the board while engaged in the performance of the

183 judge's or member's official duties, or with the intent to retaliate against the judge or member
184 on account of the performance of those official duties.

185 (3) A person is guilty of a first degree felony if the person commits aggravated assault
186 or attempted murder on a judge or a member of the Board of Pardons and Parole with the
187 purpose to impede, intimidate, or interfere with the judge or member of the board while
188 engaged in the performance of the judge's or member's official duties or with the purpose to
189 retaliate against the judge or member on account of the performance of those official duties.

190 (4) As used in this section:

191 (a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings
192 of the officer.

193 (b) "Judge" means judges of all courts of record and courts not of record and court
194 commissioners.

195 (c) "Judge or member" includes the members of the judge's or member's immediate
196 family.

197 (d) "Member of the Board of Pardons and Parole" means appointed members of the
198 board.

199 (5) A member of the Board of Pardons and Parole is an executive officer for purposes
200 of Subsection 76-5-202(1)(k).

201 Section 3. Section **78-3-29** is amended to read:

202 **78-3-29. Presiding judge -- Associate presiding judge -- Election -- Term --**
203 **Compensation -- Powers -- Duties.**

204 (1) In judicial districts having more than one judge, the district court judges shall elect
205 one judge of the district to the office of presiding judge.

206 (2) In judicial districts having more than two judges, the district court judges may elect
207 one judge of the district to the office of associate presiding judge.

208 (3) In districts having five or more full-time judges, court commissioners, referees, or
209 hearing officers, the presiding judge shall receive an additional [~~\$1,000~~] \$2,000 per annum as
210 compensation.

211 (4) In districts having ten or more full-time judges, court commissioners, referees, or
212 hearing officers, the associate presiding judge shall receive an additional [~~\$1,000~~] \$2,000 per
213 annum as compensation.

214 (5) The presiding judge has the following authority and responsibilities, consistent with
215 the policies of the Judicial Council:

216 (a) implementing policies of the Judicial Council; and

217 (b) exercising powers and performing administrative duties as authorized by the
218 Judicial Council.

219 (6) When the presiding judge is unavailable, the associate presiding judge shall assume
220 the responsibilities of the presiding judge. The associate presiding judge shall perform other
221 duties assigned by the presiding judge.

222 Section 4. Section **78-3h-105** is amended to read:

223 **78-3h-105. Service -- Income withholding -- Expiration.**

224 (1) If the court enters an ex parte child protective order or a child protective order, the
225 court shall:

226 (a) make reasonable efforts to ensure that the order is understood by the petitioner and
227 the respondent, if present;

228 (b) as soon as possible transmit the order to the county sheriff for service; and

229 (c) by the end of the next business day after the order is entered transmit a copy of the
230 order to any law enforcement agency designated by the petitioner and to the statewide domestic
231 violence network described in Section 30-6-8.

232 (2) The county sheriff shall serve the order and transmit verification of service to the
233 statewide domestic violence network described in Section 30-6-8 in an expeditious manner.

234 Any law enforcement agency may serve the order and transmit verification of service to the
235 statewide domestic violence network if the law enforcement agency has contact with the
236 respondent or if service by that law enforcement agency is in the best interests of the child.

237 (3) When an order is served on a respondent in a jail, prison, or other holding facility,
238 the law enforcement agency managing the facility shall notify the petitioner of the respondent's
239 release. Notice to the petitioner consists of a prompt, good faith effort to provide notice,
240 including mailing the notice to the petitioner's last-known address.

241 (4) Child support orders issued as part of a child protective order are subject to
242 mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in
243 IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases.

244 (5) After notice and hearing a court may modify or vacate a child protective order

245 without a showing of substantial and material change in circumstances, except that the criminal
 246 provisions of the child protective order may not be vacated within two years of issuance unless
 247 the petitioner:

248 (a) is personally served with notice of the hearing as provided in Rule 4, Utah Rules of
 249 Civil Procedure, and the petitioner personally appears before the court and gives specific
 250 consent to the vacation of the criminal provisions of the protective order; or

251 (b) submits a verified affidavit, stating agreement to the vacation of the criminal
 252 provisions of the protective order.

253 (6) The civil provisions of the child protective order expire 150 days after the date of
 254 the order unless a different date is set by the court. The court may not set a date more than 150
 255 days after the date of the order without a finding of good cause. The court may review and
 256 extend the expiration date, but may not extend it to more than 150 days after the date of the
 257 order without a finding of good cause.

258 (7) Notwithstanding Subsections (5) and (6), \$→ unless the judge orders otherwise, ←\$
 258a all child protective orders expire when the
 259 subject of the order is 18 years of age, unless the judge vacates the order earlier.

260 Section 5. Section **78-7-35** is amended to read:

261 **78-7-35. Civil fees of the courts of record -- Courts complex design.**

262 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
 263 court of record not governed by another Subsection is \$155.

264 (b) The fee for filing a complaint or petition is:

265 (i) \$50 if the claim for damages or amount in interpleader exclusive of court costs,
 266 interest, and attorney fees is \$2,000 or less;

267 (ii) \$95 if the claim for damages or amount in interpleader exclusive of court costs,
 268 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

269 (iii) \$155 if the claim for damages or amount in interpleader is \$10,000 or more; and

270 (iv) \$155 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
 271 4, Separate Maintenance.

272 (c) The fee for filing a small claims affidavit is:

273 (i) \$45 if the claim for damages or amount in interpleader exclusive of court costs,
 274 interest, and attorney fees is \$2,000 or less; and

275 (ii) \$70 if the claim for damages or amount in interpleader exclusive of court costs,

276 interest, and attorney fees is greater than \$2,000.

277 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
278 complaint, or other claim for relief against an existing or joined party other than the original
279 complaint or petition is:

280 (i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is
281 \$2,000 or less;

282 (ii) \$75 if the claim for relief exclusive of court costs, interest, and attorney fees is
283 greater than \$2,000 and less than \$10,000;

284 (iii) \$105 if the original petition is filed under Subsection (1)(a), the claim for relief is
285 \$10,000 or more, or the party seeks relief other than monetary damages; and

286 (iv) \$85 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
287 Chapter 4, Separate Maintenance.

288 (e) The fee for filing a small claims counter affidavit is:

289 (i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is
290 \$2,000 or less; and

291 (ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
292 greater than \$2,000.

293 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
294 action already before the court is determined under Subsection (1)(b) based on the amount
295 deposited.

296 (g) The fee for filing a petition is:

297 (i) \$75 for trial de novo of an adjudication of the justice court or of the small claims
298 department; and

299 (ii) \$55 for an appeal of a municipal administrative determination in accordance with
300 Section 10-3-703.7.

301 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
302 petition for writ of certiorari is \$205.

303 (i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a
304 petition for expungement is \$65.

305 (ii) There is no fee for a petition filed under Subsection 77-18-10(2).

306 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be

307 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
308 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
309 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
310 Act.

311 (ii) [~~Two~~] Four dollars of the fees established by Subsections (1)(a) through (i) shall be
312 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
313 Defense Account, as provided in Section 63-63a-8.

314 (iii) [~~One dollar~~] Three dollars of the fees established under Subsections (1)(a) through
315 (e), (1)(g), and (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as
316 provided in Section 78-31b-9.

317 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
318 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
319 deposited in the restricted account, Court Security Account, as provided in Section 63-63c-102.

320 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
321 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
322 Security Account, as provided in Section 63-63c-102.

323 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
324 United States is \$25.

325 (l) The fee for filing probate or child custody documents from another state is \$25.

326 (m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
327 Utah State Tax Commission is \$30.

328 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
329 or a judgment, order, or decree of an administrative agency, commission, board, council, or
330 hearing officer of this state or of its political subdivisions other than the Utah State Tax
331 Commission, is \$40.

332 (n) The fee for filing a judgment by confession without action under Section 78-22-3 is
333 \$25.

334 (o) The fee for filing an award of arbitration for confirmation, modification, or
335 vacation under Title 78, Chapter 31a, Utah Uniform Arbitration Act, that is not part of an
336 action before the court is \$25.

337 (p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$40.

- 338 (q) The fee for filing any accounting required by law is:
- 339 (i) \$10 for an estate valued at \$50,000 or less;
- 340 (ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;
- 341 (iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;
- 342 (iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and
- 343 (v) \$150 for an estate valued at more than \$168,000.
- 344 (r) The fee for filing a demand for a civil jury is \$75.
- 345 (s) The fee for filing a notice of deposition in this state concerning an action pending in
- 346 another state under Utah Rule of Civil Procedure 26 is \$25.
- 347 (t) The fee for filing documents that require judicial approval but are not part of an
- 348 action before the court is \$25.
- 349 (u) The fee for a petition to open a sealed record is \$25.
- 350 (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$35 in
- 351 addition to any fee for a complaint or petition.
- 352 (w) (i) The fee for a petition for authorization for a minor to marry required by Section
- 353 30-1-9 is \$5.
- 354 (ii) The fee for a petition for emancipation of a minor provided in Title 78, Chapter 3a,
- 355 Part 10, Emancipation, is \$50.
- 356 (x) The fee for a certificate issued under Section 26-2-25 is \$2.
- 357 (y) The fee for a certified copy of a document is \$4 per document plus 50 cents per
- 358 page.
- 359 (z) The fee for an exemplified copy of a document is \$6 per document plus 50 cents
- 360 per page.
- 361 (aa) The Judicial Council shall by rule establish a schedule of fees for copies of
- 362 documents and forms and for the search and retrieval of records under Title 63, Chapter 2,
- 363 Government Records Access and Management Act. Fees under this Subsection (1)(aa) shall be
- 364 credited to the court as a reimbursement of expenditures.
- 365 (bb) There is no fee for services or the filing of documents not listed in this section or
- 366 otherwise provided by law.
- 367 (cc) Except as provided in this section, all fees collected under this section are paid to
- 368 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk

369 accepts the pleading for filing or performs the requested service.

370 (dd) The filing fees under this section may not be charged to the state, its agencies, or
371 political subdivisions filing or defending any action. In judgments awarded in favor of the
372 state, its agencies, or political subdivisions, except the Office of Recovery Services, the court
373 shall order the filing fees and collection costs to be paid by the judgment debtor. The sums
374 collected under this Subsection (1)(dd) shall be applied to the fees after credit to the judgment,
375 order, fine, tax, lien, or other penalty and costs permitted by law.

376 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
377 shall transfer all revenues representing the difference between the fees in effect after May 2,
378 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
379 Facilities Construction and Management Capital Projects Fund.

380 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
381 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
382 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
383 initiate the development of a courts complex in Salt Lake City.

384 (B) If the Legislature approves funding for construction of a courts complex in Salt
385 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
386 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
387 (2)(a)(ii) to construct a courts complex in Salt Lake City.

388 (C) After the courts complex is completed and all bills connected with its construction
389 have been paid, the Division of Facilities Construction and Management shall use any monies
390 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
391 District Court building.

392 (iii) The Division of Facilities Construction and Management may enter into
393 agreements and make expenditures related to this project before the receipt of revenues
394 provided for under this Subsection (2)(a)(iii).

395 (iv) The Division of Facilities Construction and Management shall:

396 (A) make those expenditures from unexpended and unencumbered building funds
397 already appropriated to the Capital Projects Fund; and

398 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
399 under this Subsection (2).

400 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
401 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
402 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
403 account.

404 (c) The Division of Finance shall deposit all revenues received from the court
405 administrator into the restricted account created by this section.

406 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall
407 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
408 Vehicles, in a court of record to the Division of Facilities Construction and Management
409 Capital Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated
410 on the balance of the fine or bail forfeiture paid.

411 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
412 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in
413 a court of record to the Division of Finance for deposit in the restricted account created by this
414 section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the
415 balance of the fine or bail forfeiture paid.

416 (3) (a) There is created within the General Fund a restricted account known as the State
417 Courts Complex Account.

418 (b) The Legislature may appropriate monies from the restricted account to the
419 administrator of the courts for the following purposes only:

420 (i) to repay costs associated with the construction of the court complex that were
421 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

422 (ii) to cover operations and maintenance costs on the court complex.

423 Section 6. Section **78-36-8.5** is amended to read:

424 **78-36-8.5. Possession bond of plaintiff -- Alternative remedies.**

425 (1) At any time between the filing of his complaint and the entry of final judgment, the
426 plaintiff may execute and file a possession bond. The bond may be in the form of a corporate
427 bond, a cash bond, certified funds, or a property bond executed by two persons who own real
428 property in the state and who are not parties to the action. The court shall approve the bond in
429 an amount that is the probable amount of costs of suit and damages which may result to the
430 defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of

431 the court for the benefit of the defendant for all costs and damages actually adjudged against
432 the plaintiff. The plaintiff shall notify the defendant that he has filed a possession bond. This
433 notice shall be served in the same manner as service of summons and shall inform the
434 defendant of all of the alternative remedies and procedures under Subsection (2).

435 (2) The following are alternative remedies and procedures applicable to an action if the
436 plaintiff files a possession bond under Subsection (1):

437 (a) With respect to an unlawful detainer action based solely upon nonpayment of rent
438 or utilities, the existing contract shall remain in force and the complaint shall be dismissed if
439 the defendant, within three days of the service of the notice of the possession bond, pays
440 accrued rent, utility charges, any late fee, and other costs, including attorney's fees, as provided
441 in the rental agreement.

442 (b) The defendant may remain in possession if he executes and files a counter bond in
443 the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two
444 persons who own real property in the state and who are not parties to the action. The form of
445 the bond is at the defendant's option. The bond shall be payable to the clerk of the court. The
446 defendant shall file the bond prior to the expiration of three days from the date he is served
447 with notice of the filing of plaintiff's possession bond. The court shall approve the bond in an
448 amount that is the probable amount of costs of suit and actual damages that may result to the
449 plaintiff if the defendant has improperly withheld possession. The court shall consider prepaid
450 rent to the owner as a portion of the defendant's total bond.

451 (c) ~~[The] If the defendant~~~~[, upon demand,]~~ demands, within three days of being served
452 with notice of the filing of plaintiff's possession bond, the defendant shall be granted a hearing
453 ~~[to be held prior to the expiration of three days from the date the defendant is served with~~
454 ~~notice of the filing of plaintiff's possession bond]~~ within three days of the defendant's demand.

455 (3) If the defendant does not elect and comply with a remedy under Subsection (2)
456 within the required time, the plaintiff, upon ex parte motion, shall be granted an order of
457 restitution. The constable of the precinct or the sheriff of the county where the property is
458 situated shall return possession of the property to the plaintiff promptly.

459 (4) If the defendant demands a hearing under Subsection (2)(c), and if the court rules
460 after the hearing that the plaintiff is entitled to possession of the property, the constable or
461 sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the

462 court allows the defendant to remain in possession and further issues remain to be adjudicated
463 between the parties, the court shall require the defendant to post a bond as required in
464 Subsection (2)(b). If at the hearing the court rules that all issues between the parties can be
465 adjudicated without further court proceedings, the court shall, upon adjudicating those issues,
466 enter judgment on the merits.

466a **§→ Section 7. Coordinating S.B. 224 with S.B. 136.**

466b **If this bill, S.B. 224, Judiciary Amendments, and S.B. 136, Unlawful Detainer**
466c **Amendments, both pass, it is the intent of the Legislature that the amendments in Subsection**
466d **78-36-8.5(2)(c) in this bill shall supercede the amendments to the same subsection in S.B. 136,**
466e **Unlawful Detainer Amendments. ←§**

Legislative Review Note
as of 2-1-07 9:52 AM

Office of Legislative Research and General Counsel

S.B. 224 - Judiciary Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will require additional appropriations of \$9,000 for the Courts to fund presiding judge increases as provided in the bill. Additional fees is expected to generate \$215,000 for the Children's Legal Defense Fund and \$210,000 for the Dispute Resolution Fund annually.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$9,000	\$9,000	\$0	\$0	\$0
Restricted Funds	\$0	\$0	\$0	\$0	\$425,000	\$425,000
Total	\$0	\$9,000	\$9,000	\$0	\$425,000	\$425,000

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Presiding judges will see a \$1,000 annual compensation increase.
